

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL J. WOODCOCK,

No. C 07-3043 WHA (PR)

Petitioner,

**GRANT OF LEAVE TO PROCEED
IN FORMA PAUPERIS; ORDER TO
SHOW CAUSE**

v.

BEN CURRY, Warden,

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

Venue is proper because the conviction was obtained in Santa Clara County, which is in this district. *See* 28 U.S.C. § 2241(d).

DISCUSSION

A. Standard of Review

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). A petition must "specify all the grounds for relief" and set forth "facts supporting each of the grounds thus specified." 28

1 U.S.C. § 2254 Rule 2(c). A district court shall "award the writ or issue an order directing the
2 respondent to show cause why the writ should not be granted, unless it appears from the
3 application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

4 *B. Legal Claims*

5 In 1999, a jury convicted petitioner of assault by means of force likely to produce great
6 bodily injury, with a finding that he personally inflicted great bodily injury. With sentencing
7 enhancements, he was sentenced to prison for twenty-eight years to life. His does not say
8 whether he appealed, but does say that a state coram nobis petition and a motion to vacate his
9 sentence were denied.

10 As grounds for federal habeas relief, petitioner asserts that the trial court's response to a
11 jury question had the effect of taking an element from the jury, thus violating his Sixth
12 Amendment right to a jury determination on all elements. This claim is sufficient to require a
13 response.

14 **CONCLUSION**

15 1. Leave to proceed in forma pauperis (document number 2 on the docket) is **GRANTED**.

16 2. The clerk shall mail a copy of this order and the petition with all attachments to the
17 respondent and the respondent's attorney, the Attorney General of the State of California. The
18 clerk shall also serve a copy of this order on the petitioner.

19 3. Respondent shall file with the court and serve on petitioner, within sixty days of
20 service of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
21 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
22 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
23 trial record that have been transcribed previously and that are relevant to a determination of the
24 issues presented by the petition.

25 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
26 court and serving it on respondent within thirty days of service of the answer.

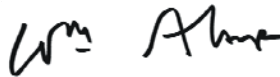
27 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
28 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a

1 motion, petitioner shall file with the court and serve on respondent an opposition or statement of
2 non-opposition within thirty days of receipt of the motion, and respondent shall file with the
3 court and serve on petitioner a reply within 15 days of receipt of any opposition.

4 5. Petitioner is reminded that all communications with the court must be served on
5 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be
6 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also
7 must keep the court informed of any change of address by filing a separate paper with the clerk
8 headed "Notice of Change of Address," and comply with any orders of the court within the time
9 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this
10 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*
11 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

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13 **IT IS SO ORDERED.**

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15 Dated: June 15, 2007.



16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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